owned subsidiaries is still valid, and we therefore decline to expand the reach of section 63.21(i) to commonly controlled subsidiaries.

5. Section 214 Authority for Bell Operating Company In-Region Service

42. Current Commission policy requires a Bell Operating Company (BOC) to file a separate section 214 application for each state in which it seeks authority to provide international service originating in a particular in-region state.[105] These applications must be filed concurrently with, or after, the BOC files an application for authority under section 271 of the Communications Act[106] to provide interLATA service in that state or after it has received such authority for that state.[107]

43. Verizon requests that the Commission change its policy so that once a BOC receives section 271 authority to provide interLATA service in one state in its region it does not need to modify its section 214 international authorization when it gains section 271 authority for additional states.[108] Verizon asserts that filing an application to modify the international authorization is burdensome and unnecessary.[109] It contends that the Commission already will have addressed all the issues relating to the BOC's international services in the original application for in-region international authority, and all foreign affiliations will have been disclosed. It concludes that once a section 271 application is granted to that BOC, there are no additional issues to consider for the international authorization.[110]

44. We agree with Verizon, and we change our policy accordingly. We agree that the Commission addresses the issues relating to a BOC's provision of in-region international service in the initial application for section 214 authority for in-region service. In that process the Commission considers the BOC's foreign affiliations and makes a determination of the BOC's regulatory classification on international routes – whether it should be classified as a dominant or non-dominant carrier. Under our rules the BOC is required to notify the Commission of any change in its foreign carrier affiliations after it receives its initial section 214 authorization.[111] We conclude that the addition of another in-region state to the BOC's international section 214 authority, by

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105 *Pacific Bell Communications, et al.*, ITC-214-19970303-00131, et al., Order, 15 FCC Rcd 157 (TD/IB 2000).

106 47 U.S.C. § 271.

107 *Id.* at 159 ¶ 2.

108 Verizon comments at 7-8.

109 Verizon comments at 7.

110 Verizon comments at 7-8.

111 47 C.F.R. § 63.11.

carrier shall not provide service on that route unless it has received specific authority to do so § 63.18(e)(3).

(b) The carrier may provide service using half-circuits on any U.S. common carrier and non-common carrier facilities that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list. The exclusion list is available from the International Bureau's World Wide Web site at http://www.fcc.gov/ib.

(c) Specific authority under § 63.18(e)(3) is required for the carrier to provide service using any facilities listed on the exclusion list, to provide service between the United States and any country on the exclusion list, or to construct, acquire, or operate lines in any new major common carrier facility project.

* * * * *

13. Section 63.23 is amended by revising paragraphs (a) and (b) to read as follows:

§63.23 Resale-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(3):

(1) Resold switched services to a non-WTO Member country where the applicant is, or is affiliated with, a foreign carrier; and

(2) Switched or private line services over resold private lines to a destination market where the applicant is, or is affiliated with, a foreign carrier and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(3).

14. Section 63.24 is amended to read as follows:

§ 63.24 Assignments and transfers of control.

(a) General. Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to

such carriers possess market power on the U.S. end of the route. We also exempt CMRS carriers from the section 63.19 discontinuance requirements. In addition, we exempt CMRS carriers providing resale of international switched services from filing quarterly traffic and revenue reports for their service to foreign markets where they are affiliated with a foreign carrier with market power in that market and that collects settlement payments from U.S. carriers. We also amend our policy regarding the filing of applications for international section 214 authorization associated with Bell Operating Company requests for authority to provide interLATA service in an in-region state pursuant to section 271. Finally, we amend several rules to clarify the intent of those rules and to eliminate certain rules that no longer have any application. We find that these proposed changes will remove unnecessary burdens from both the public and the Commission.

IV. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Act Certification

47. The Regulatory Flexibility Act of 1980, as amended (RFA),[114] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[115] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[116] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[117] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM.[118] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA.

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114 The RFA, *see* 5 U.S.C § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1966) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

115 5 U.S.C. § 605(b).

116 5 U.S.C. § 601(6).

117 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

118 *See 2000 Biennial Regulatory Review*, IB Docket 00-231,15 FCC Rcd 24264.

8. Section 63.18 is amended by removing paragraph (e)(3) and Notes 1 through 4 to paragraph (h) and amending paragraph (e)(4) and redesignating paragraph (e)(4) as (e)(3) and revising paragraph (g) and adding Note to paragraph (h) to read as follows.

§ 63.18 Contents of applications for international common carriers.

* * * * *

(3) Other Authorizations. If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) and (e)(2), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and §63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

* * * * *

Note to paragraph (h): Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

* * * * *

9. Section 63.19 is amended to read as follows:

§ 63.19 Special procedures for discontinuances of international services.

(a) With the exception of those international carriers described in paragraphs (b) and (c) of this section, any international carrier that seeks to discontinue, reduce or impair

procedure for certain carriers while protecting customers from abrupt discontinuances of service. The Order also exempts CMRS carriers from the requirements for notification of discontinuance of their international service. We do not believe that these changes will impose any significant economic impact on small entities.

53. The Order clarifies other rules and eliminates rules that are no longer necessary, duplicative, or obsolete. In addition, the Order eliminates many procedural burdens placed on all entities. The measures contained in the Order are administrative and procedural changes designed to further streamline and simplify the rules for international telecommunications carriers, and there will be no significant impact imposed on small entities.

54. Therefore, we certify that none of the requirements of the Order will have a significant economic impact on a substantial number of small entities.

55. **Report to Congress:** The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A). In addition, the Order and this Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration and will be published in the Federal Register, 5 U.S.C. § 605(b).

B. Paperwork Reduction Act of 1995 Analysis

56. The Order contains new or modified information collections. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public comments are due 60 days from the date of publication of this Order in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

57. Written comments by the public must be submitted on the modified information collections on or before 60 days after date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov; and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Jeanette_I._Thornton@omb.eop.gov.

APPENDIX

FINAL RULES

Parts 43 and 63 of the Commission's rules are amended as follows:

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:
Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. Section 43.61 is amended by revising paragraph (c) to read as follows:

§ 43.61 Reports of international telecommunications traffic.
* * * * *

(c) Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9, are not required to file reports pursuant to this paragraph. For purposes of this paragraph, *affiliated* and *foreign carrier* are defined in § 63.09 of this chapter.

3. Remove § 43.81.

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

4. The authority citation for part 63 continues to read as follows:
Authority: section 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

5. Section 63.09 is amended by revising Note 2 from § 63.09 to read as follows:

other cases, the relevant determination shall be made on a case-by-case basis. (1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; (2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; (3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; (4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); (5) Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or (6) Assignment of less than a controlling interest in a partnership.

(e) Applications for substantial transactions.

(1) In the case of an assignment or transfer of control of an international section 214 authorization that is not *pro forma*, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include the information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee. The information requested in paragraphs (h) through (p) of § 63.18 is required only for the transferee/assignee. At the beginning of the application, the applicant shall include a narrative of the means by which the proposed transfer or assignment will take place.

(3) The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee shall notify the Commission no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification may be made by letter (sending an original and five copies to the Office of the Secretary) and shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) Notifications for non-substantial or *pro forma* transactions.

(1) In the case of a *pro forma* assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A *pro forma* assignee or a carrier that is subject to a *pro forma* transfer of control shall file a notification with the Commission no later than 30 days after the assignment or transfer is completed. The notification may be made by letter (sending an original and five copies to the Office of the Secretary). The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee, and

international destination. Wireless consumers' reliance on their mobile phones for international calls is increasing rapidly. The availability of wireless standards that allow operation in many countries grows every day, so customers will increasingly be traveling with their mobile phones. The fact that a wireless carrier eliminates service to an international destination can render that carrier far less valuable to a consumer. Arranging for new service takes time. Customers – especially business customers – cannot afford to have gaps in service.

A requirement that a carrier merely warn their customers before shutting off service is eminently reasonable, and not overly burdensome. Wireline carriers live with this rule. It makes no sense to give wireless customers less protection than wireline customers. Because the 60-day warning rule continues to serve the public interest, I must dissent from its elimination.

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: 2000 Biennial Regulatory Review, Amendment of Parts 43 and 63 of the Commission's Rules, IB Docket No. 00-231

The Biennial Review process defined by Congress and emphasized by the court in *Fox* imposes an important burden on the Commission. We must root out regulations that have outlived their usefulness so that we can focus our limited resources on those rules that are necessary and create public interest benefits. The *Fox* court admonished the Commission for its failure under a similar biennial review provision "to address meaningfully the question that Congress required it to answer."[1] I fear that too often past commissions have failed to take this responsibility seriously or even to purport to give Congress a meaningful answer to the biennial review question.[2]

I was a vigorous advocate of eliminating many of the rules we strike from the CFR today. For example, the reporting requirements for affiliated CMRS carriers offering resale on international routes made no sense. It is not clear that CMRS carriers ever had a rational incentive to engage in the conduct. Nor was it obvious how the Commission could have detected bad acts through the data collected. Yet even this rule did not draw our attention in the biennial review process. Instead it was the diligent work of Cingular and Verizon Wireless that called our attention to the rule and its dubious utility. In coming reviews, the Commission staff will be taking an even closer look at our rules. But our experiences here emphasize the critical importance the private sector necessarily plays in the biennial review process.

I am still skeptical of some of the rules that survive our review today. Why, for example, should carriers have to file a letter with the International Bureau to tell them that the Wireline Competition Bureau has approved a Section 271 application? And surely there are more efficient ways to handle Section 214 applications from various subsidiaries. Since the statutory mandate requires us to eliminate rules "no longer necessary in the public interest," we must go beyond whether a rule has any benefits and ask whether the regulation is truly necessary. The Commission has made substantial progress in today's order towards this standard and I look forward to building on this foundation in the 2002 review.

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[1] Fox Television Stations v. FCC, 280 F.3d 1027, 1044 (D.C. Cir. 2002). The Commission has sought rehearing regarding certain aspects of that decision.

[2] See e.g. Separate Statement of Commissioner Harold Furchtgott-Roth, Comprehensive Report on FCC's Biennial Review Including Suggestions for Year 2000 Review (Dec. 21, 1998).

STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Approving in part, dissenting in part

Re: 2000 Biennial Review; Amendment of Parts 43 and 63 of the Commission's Rules

Today's Order, in furtherance of our statutory biennial review mandate, is the culmination of the Commission's inquiry into whether a large number of diverse Commission rules related to international communications are "no longer necessary in the public interest." Where our rules are truly "no longer in the public interest," I will not hesitate to eliminate them. Consequently, I agree with the majority's decision on many of the rules at issue in this Order. I will not, however, eliminate rules that continue to serve the public interest merely for the sake of eliminating rules. If a rule continues to play an important role in protecting American consumers, it should be maintained and enforced.

I therefore must dissent to the majority's decision to eliminate:

(1) Pro forma assignments and transfers of control rules that allow the Commission to balance the desire to streamline review with the need to enforce the law.

(2) The settlement rate benchmarks condition, which enables the Commission to guard against accounting rate violations; and

(3) The 60-day rule for wireless carriers, which requires all carriers to warn customers before discontinuing international service.

Pro Forma Assignments and Transfers of Control.

Current Commission rules list six types of transactions that are considered pro forma and that therefore do not require prior Commission approval. The Commission identified these six types of transactions as a way of reducing delay for transactions that clearly would not violate our rules, without reducing our ability to properly address other transactions with a higher chance of being problematic.

The Majority believes that these six categories are overly restrictive. Today's Order therefore amends our rules giving the International Bureau the power to determine whether or not a transaction is pro forma on a case-by-case basis, and, critically, giving transacting companies themselves the power to treat any transaction as pro forma, unless there is a change in de facto control. Transacting companies may now treat transfers as

itself, does not raise additional issues that are not already addressed in the BOC's initial application for in-region international service. Thus, we find it is not necessary to require a BOC to file a new section 214 application to provide international service for each in-region state for which it receives authority under section 271 to provide in-region interLATA service.

45. Commission policy going forward will require a BOC to file an application for authority to provide international service originating in an in-region state concurrently with, or after, it files an application for section 271 authority to provide interLATA service in that state or after it has received such authority.[112] The application may request authority to provide international service from in-region states as the BOC receives section 271 authority for each state. In that case any grant of the international section 214 authority will be conditioned such that it shall be effective for each in-region state only at such time as the BOC receives section 271 authority to provide in-region interLATA service in that state. After a BOC has received section 214 authority to provide international service and section 271 authority to provide interLATA service from an in-region state, it need not file a new application for section 214 authority to provide service for in-region states for which it subsequently receives authority under section 271 to provide interLATA service. The BOC may begin to provide international service from that state as soon as it has section 271 authority to provide interLATA service from that state. The BOC, however, must notify the Commission that it has begun to provide international service from an in-region state. The BOC must provide such notice by sending a letter to the Secretary, with a copy to the Chief of the Policy Division, International Bureau, stating that it has received section 271 authority to provide interLATA service from the particular state, with a cite to the order granting such authority, and that pursuant to its existing international section 214 authority it began providing international service from that state. The letter must indicate when the BOC initiated international service from that state and must be filed within 7 days after the initiation of international service from that state. We remind the BOCs that under the Commission's rules they are under a continuing obligation to maintain and update their foreign carrier affiliation notifications.[113]

III. CONCLUSION

46. In this proceeding we amend several of the Commission's rules regarding the provision of international telecommunications service. We amend our rule concerning *pro forma* assignments and transfers of control of international section 214 authorizations. We also conclude that that is no longer necessary to apply the settlement rate benchmarks condition to section 214 authorizations to provide services over international private lines. We modify our rules to relieve "dominant" international carriers of the requirement to seek prior approval to discontinue service, except where

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[112] This policy will also apply to affiliates of the BOC. *See* 47 U.S.C. § 271.

[113] *See* 47 C.F.R. § 63.11.

pro forma without any preceding Commission determination on the matter, and merely are required to inform the International Bureau after the transaction is completed.

Today the majority eliminates our limitations on what type of transactions are pro forma. The majority then gives the job of deciding whether to treat transactions as pro forma to the very companies that have the most to gain from cursory Commission review. This will result in many more transactions going essentially unexamined by the Commission. I believe that the Commission has the responsibility to examine each transaction to determine whether it comports with the law. Where there are clear categories of transactions that do not violate the law we should, and we have, created streamlined procedures. Because, however, the majority's decision will greatly curtail our attention even to transactions that may violate our rules, and because our pro forma assignment and transfer of control rules continue to serve the public interest, I must dissent.

The Settlement Rate Benchmark Condition

The majority also finds that it is no longer necessary to apply the "settlement rate benchmarks condition" to section 214 authorizations. The Commission created benchmark rates so foreign carriers could not charge excessive rates where they have market power at home. As part of this process, the Commission also created the "settlement rate benchmark condition," which states that a US carrier cannot provide switched or private-line service on a foreign route where it is affiliated with a carrier with market power unless the foreign carrier offers all US carriers a rate below the benchmark. This prevents carriers from bypassing the benchmark rates order by routing specially arranged rates over private lines, as part of an effort to price squeeze other carriers.

The majority believes that this condition is no longer needed for private lines because it is unlikely that carriers will be able to route traffic over private lines without being discovered. They believe existing reporting requirements will allow us to catch offending carriers. I believe that reporting requirements alone are not adequate to police violations of our benchmark rates, given Commission resources and the complexities of traffic arrangements. There are considerable incentives to violate the benchmark rules and we will be hard pressed to detect violations through these reports alone. Because the settlement rate benchmark condition continues to serve the public interest, I must dissent from its elimination.

Discontinuance of Service by Dominant Carriers.

Elsewhere in today's Order the majority eliminates the requirement that wireless carriers must notify their customers 60 days before terminating service to a particular

48. The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. The Commission identified a number of rules that could be modified or eliminated in light of competition in international telecommunications services. The Commission also identified a number of rules that could be clarified to make it easier for practitioners and other members of the public to understand and follow those rules. Commenters not only supported the proposals contained in the NPRM, but they requested changes to several other rules.

49. We believe that these changes are in the public interest and will remove unnecessary burdens on the public and the Commission. The rules and policies contained in the Order will benefit all carriers providing international common carrier service pursuant to Section 214 of the Act, including those that are small entities.

50. The Order adopts changes to the rules regarding assignments and transfers of control of international section 214 authorizations. In particular the Order consolidates the rules into one rule section, and it revises the rules for *pro forma* transfers and assignments to be more consistent with those procedures currently used for other service authorizations, particularly commercial mobile radio services (CMRS). The changes will eliminate confusion over our rules regarding assignments and transfers of control. Also, the rules will provide greater flexibility for all applicants, including small entities, in structuring transactions. The modifications to the rules eliminate filing requirements on small entities and, therefore, do not pose a significant economic impact on such entities.

51. The Order also removes the benchmark condition applicable to section 214 authorizations that provide facilities-based international private line service. The Commission adopted this condition for facilities-based switched service to affiliated markets to address the potential for a carrier to engage in a predatory price squeeze. We believe the condition is no longer necessary to prevent carriers from evading the condition as it applies to facilities-based switched service. We find that this condition is burdensome to carriers and could prevent the development of innovative services. We believe that removal of this specific condition will be in the public interest, and it will not impose a significant economic impact on small entities.

52. The Order also relieves international carriers of the requirement to seek prior approval for discontinuance of service, except where such carriers possess market power on the U.S. end of the route. The Order retains a notification requirement to provide customers with sufficient time to obtain an alternative service provider before service is discontinued. Currently the rules require prior notification of discontinuances of service by U.S. carriers regulated as dominant. We do not believe that the dominant and nondominant classification should be used in determining criteria for requiring prior approval. Rather, the Commission believes that prior approval should be required only for carriers possessing market power on the U.S. end of the route. This modification clarifies the carriers subject to the rule, and it removes the burdensome prior notification

V. ORDERING CLAUSES

58. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4, 11, 214, 218, 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 161, 214, 218, 219, 220, 403, this Report and Order in IB Docket No. 00-231 IS HEREBY ADOPTED.

59. IT IS FURTHER ORDERED that Parts 43 and 63 of the Commission's rules ARE AMENDED as set forth in Appendix A. These amendments and policy changes set forth in this Report and Order shall be effective 30 days after publication in the Federal Register or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507.

60. IT IS FURTHER ORDERED that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, SHALL SEND a copy of this ORDER, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Sectretary

(ii) A certification that the transfer of control or assignment was *pro forma* and that, together with all previous *pro forma* transactions, does not result in a change in the actual controlling party.

(3) A single letter may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a *pro forma* assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under paragraph (f) of this section.

(g) Involuntary assignments or transfers of control. In the case of an involuntary assignment or transfer of control to (1) a bankruptcy trustee appointed under involuntary bankruptcy; (2) an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, (3) in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

15. Section 63.53 is amended by removing paragraph (b) and redesignating paragraph (c) as (b).

§ 63.09 Definitions applicable to international Section 214 authorizations.

* * * * *

Note 2: Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain that is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of "carrier," then X's interest in "carrier" would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in "carrier" would be 7.8 percent (0.30 x 0.26 because A's interest in X is less than 50 percent). Under the 25 percent attribution benchmark, X's interest in "carrier" would be cognizable, while A's interest would not be cognizable.

6. Section 63.10 is amended by revising paragraphs (d) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

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(d) A carrier classified as dominant under this section shall file an original and two copies of each report required by paragraphs (c)(3), (c)(4), and (c)(5) of this section with the Chief, International Bureau. The carrier shall also file one copy of these reports with the Commission's copy contractor. The transmittal letter accompanying each report shall clearly identify the report as responsive to the appropriate paragraph of § 63.10(c).

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide switched facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96-261. See FCC 97-280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov).

7. Section 63.17 is amended by revising paragraph (b)(4) to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(4) No U.S. common carrier may engage in switched hubbing to or from a third country where it has an affiliation with a foreign carrier unless and until it has received authority to serve that country under § 63.18(e)(1), (e)(2), or (e)(3).

another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) Assignments. For purposes of this section, an assignment of an authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(c) Transfers of control. For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in Note to paragraph (c).

NOTE TO PARAGRAPH (c): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: (1) power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operations; (5) ability to receive monies and profits from the facility's operations; and (6) unfettered use of all facilities and equipment.

(d) Pro forma assignments and transfers of control. Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*. Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to paragraph (d). The types of transactions listed in Note 2 to paragraph (d) shall be considered presumptively *pro forma* and prior approval from the Commission need not be sought.

NOTE 1 TO PARAGRAPH (d): Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: (1) power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; (2) authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; (3) ability to play an integral role in major management decisions of the licensee; (4) authority to pay financial obligations, including expenses arising out of operations; (5) ability to receive monies and profits from the facility's operations; and (6) unfettered use of all facilities and equipment.

NOTE 2 TO PARAGRAPH (d): If a transaction is one of the types described herein, the transaction is presumptively *pro forma* and prior approval need not be sought. In all

service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.601:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 60 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice.

(2) The carrier shall file with this Commission a copy of the notification on or after the date on which notice has been given to all affected customers.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9, are not subject to the provisions of this section.

10. Section 63.20 is amended by revising paragraph (a) to read as follows:

§ 63.20 Copies required; fees; and filing periods for international service providers.

(a) Unless otherwise specified the Commission shall be furnished with an original and five copies of applications filed for international facilities and services under Section 214 of the Communications Act of 1934, as amended. Upon request by the Commission, additional copies of the application shall be furnished. Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

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11. Section 63.21 is amended by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

12. Section 63.22 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is, or is affiliated with, a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks market power in the destination market (see § 63.10(a)), the